

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LARRY MORITZ</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 261,980
<b>ENCORE RECEIVABLE MANAGEMENT, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>GENERAL CASUALTY OF ILLINOIS</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the preliminary hearing Order dated May 16, 2001 entered by Administrative Law Judge Steven J. Howard.

**ISSUES**

This is a claim for a December 12, 2000 accident. Claimant slipped and fell as he was leaving work and walking to his vehicle in a parking lot adjacent to the building where respondent maintains an office. The issue before the Board is whether claimant's accident arose out of and in the course of his employment with respondent.

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Appeals Board finds:

1. Larry Wayne Moritz worked for Encore Receivable Management, Inc. (Encore) at an office located in Olathe, Kansas.
2. At approximately 4:30 p.m. on December 12, 2000, Mr. Moritz was injured when he slipped and fell as he was walking in an ice and snow covered parking lot on his way to his vehicle.
3. Encore leased space in the building adjacent to the parking lot where claimant fell. The record does not establish whether there were other tenants in the building and, if there were, whether those tenants likewise used the portion of the parking lot where claimant fell. The record is clear, however, that Encore neither owned nor maintained the parking lot

where Mr. Moritz fell. Its lease agreement specifically provided for the lessor to maintain the parking lot and to contract for the snow and ice removal.

4. According to the lease agreement, the lessor designated the area of the parking lot where the employees of Encore were to park. This was communicated to Mr. Moritz by his supervisors and so, in effect, it was Encore that designated the area of the parking lot where the employees of Encore were to park. The record does not reflect whether Encore also designated the door that he was to use to enter the building or if the public used that same route, if at all, only to deal with Encore.

5. Although the record fails to establish whether or not the parking lot where Mr. Moritz fell was available to the general public or used by the public to visit either Encore or the other tenants in the building, if any, the record does disclose that some portion of the parking lot was leased to Olathe Ford. It is unclear, however, whether Olathe Ford used the same or a different portion of the parking lot from that designated for use by the employees of Encore.

Q. [H. Wayne Powers] Insofar as the parking lot where Mr. Moritz' car was parked, are there other vehicles there that are not associated with, and are parked in that parking lot, that are not associated with Encore Receivable Management?

A. [Kathy Cooley] Yes. Olathe Ford also uses, leases a portion of that parking lot.

Q. And they have nothing to do with Encore Receivable Management?

A. No, they do not.

Q. And the owner of the premises tells them where they can park their cars and tells you where your employees can park your cars?

A. Yes.<sup>1</sup>

6. The record fails to establish that the area of the parking lot where Mr. Moritz was instructed to park his car was not used by employees of other tenants or by the public for dealings other than with Encore.

#### **CONCLUSIONS OF LAW**

1. The preliminary hearing Order should be reversed.

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<sup>1</sup> May 15, 2001 Tr. of Prel. H. at 29-30.

2. Accidents occurring while employees are on their way to or from work are generally not compensable. But accidents that occur either on an employer's premises or on the only available route to work may be compensable depending upon the facts.

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. **An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.**<sup>2</sup> (Emphasis added.)

3. The above statute is a codification of Kansas' "going and coming" rule.<sup>3</sup> And the statute permits only two exceptions to that rule - a "premises" exception and a "special hazard" exception.<sup>4</sup>

4. Kansas narrowly construes "premises" to be a place either controlled by the employer or where a worker may reasonably be when performing his or her job duties.<sup>5</sup>

5. Because of that construction, the Board concludes that the parking lot was not a part of Encore's premises. The lot was neither owned nor maintained by Encore. Portions of the parking lot were used by at least one other tenant. By designating where its employees should park, Encore did not exercise such control over the parking lot so as to render it part of its premises. The Office Lease (Respondent's Exhibit A) suggests that the "premises" leased by Encore included a pro-rata share of the grounds, common areas and parking lot. But paying a pro-rata share of the cost of maintaining the parking lot, likewise, did not constitute such control where the lease agreement otherwise specifically provides for the maintenance of the parking lot, including the removal of snow and ice therefrom.

6. Before the "special hazard" exception will apply, the accident (1) must occur on the only route available to or from work, (2) the route must possess a special risk or hazard,

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<sup>2</sup> K.S.A. 44-508(f).

<sup>3</sup> See Madison v. Key Work Clothes, 182 Kan. 186, 318 P.2d 991 (1957).

<sup>4</sup> Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

<sup>5</sup> Thompson, Syl. ¶ 1.

and (3) the route must be used by the public, if at all, only to deal with the employer. The claimant must prove all three elements.<sup>6</sup>

7. The Board concludes that Mr. Moritz has failed to prove the three requirements of the "special hazard" exception.

**WHEREFORE**, the Appeals Board finds that the preliminary hearing Order dated May 16, 2001, entered by Administrative law Judge Steven J. Howard, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2001.

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BOARD MEMBER

c: Elaine M. Eppright, Kansas City, MO  
H. Wayne Powers, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director

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<sup>6</sup> Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995).